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Attorneys for Defendant Daniel N. Gordon P.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Eugene Division

LAWRENCE JAMES SACCATO,

Plaintiff,

vs.

DANIEL N. GORDON P.C.,

Defendant,

FIA CARD SERVICES,
a.k.a. Bank of America

Co-Defendant.

Case No. 10-6111-HO

**DEFENDANT DANIEL N. GORDON
P.C.'S RESPONSE TO PLAINTIFF'S
MOTION FOR RECONSIDERATION
OF SUMMARY JUDGMENT FOR
DEFENDANT GORDON**

Plaintiff's motion for reconsideration is not well-taken and should be denied. This court got it right when it ordered that the defendant law firm was entitled to judgment in its favor as a matter of law.

Plaintiff has conceded that he has no viable claims against the defendant law firm under the Fair Credit Reporting Act as alleged in his complaint. And, the defendant law firm

showed that it did not violate the FCRA, as a matter of law. Therefore, the court was correct to grant summary judgment.

Nonetheless, plaintiff continues to assert that he has a claim under the Fair Debt Collection Practices Act because the defendant law firm failed to validate the debt it was collecting. Despite the fact that plaintiff has not sought leave to amend his complaint, the court, in consideration of the plaintiff's *pro se* status, has already reviewed the record to determine if there was a potential FDCPA violation and found none. The only unlawful collection activity asserted by plaintiff in his response to the motion for summary judgment, and in his pending motion for reconsideration, is the defendant law firm's failure to verify a debt in response to plaintiff's letter dated February 23, 2010 [#12, PE 101]. But, as the court properly found, this letter of dispute came some 5½ months after the defendant's initial demand letter [#12, Ex. 3]. The FDCPA allows only a 30-day window for a dispute to trigger a duty to verify. 15 USC § 1692g(a) and (b). Thus, there could be no violation based on plaintiff's long delayed dispute.

Plaintiff attempts to confuse the issue by pointing out that his letter referenced a different account number from the initial demand letter. But plaintiff does not explain how this creates liability under the FDCPA. The demand letter included the amount of the debt and the name of the creditor to whom the debt was owed, along with the required notices, in full compliance with Section 1692g(a)(1)-(5). If plaintiff had a question about the account number he was entitled to dispute the debt within 30 days. But he did not.

The court was correct to dismiss plaintiff's FCRA claim against the defendant law firm, and was correct to find that, even if the complaint were amended to allege an FDCPA claim, it too would fail as a matter of law.

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The defendant law firm, therefore, respectfully requests that plaintiff's motion for reconsideration be denied.

DATED this 16th day of September, 2010.

LUVAAS COBB
Attorneys for Defendant Daniel N. Gordon, P.C.

By: /s/ David A. Jacobs
David A. Jacobs, OSB No. 942202
E-mail: djacobs@luvaascobb.com
Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT DANIEL N. GORDON P.C.'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF SUMMARY JUDGMENT FOR DEFENDANT GORDON** on:

Lawrence James Saccato
6387 Old Highway 99S
Roseburg, Oregon 97471
Pro Se Plaintiff

by the following indicated method or methods:

- X By **mailing** a full, true, and correct copy thereof in a sealed, first-class postage prepaid envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s), and deposited with the United States Postal Service at Eugene, Oregon, on the date set forth below.
- _____ By depositing with **B & J/Barristers Aide** for hand-delivery a full, true, and correct copy thereof in a sealed envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s) on the date set forth below.
- _____ By causing a full, true, and correct copy thereof to be **hand-delivered** to the attorney(s) at the attorney's last known office address listed above on the date set forth below.
- _____ By sending a full, true, and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s), on the date set forth below.
- _____ By **faxing** a full, true, and correct copy thereof to the attorney(s) at the fax number(s) shown above, which is the last known fax number for the attorney's office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the attached transmission report(s).

DATED this 16th day of September, 2010.

LUVAAS COBB
Of Attorneys for Defendant Daniel N. Gordon P.C.

/s/ David A. Jacobs
David A. Jacobs, OSB No. 942202